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FIRST GENERAL COUNSEL'S REPORT

SENSITIVE

RAD REFERRAL 12L-14

DATE RECEIVED: March 23, 2012

DATE ACTIVATED: June 4, 2012

EARLIEST SOL: December 29, 2013

LATEST SOL: April 15, 2016

SOURCE:

Internally Generated

RESPONDENT:

Bachmann for Congress and Daniel Puhl in his
official capacity as Treasurer

RELEVANT STATUTES:

2 U.S.C. § 434(b)

11 C.F.R. § 104.3

INTERNAL REPORTS CHECKED:

Disclosure Reports

FEDERAL AGENCIES CHECKED:

None

I. INTRODUCTION

The Reports Analysis Division ("RAD") referred Bachmann for Congress and Daniel Puhl in his official capacity as treasurer (the "Committee") to the Office of the General Counsel ("OGC") for failing to disclose, in the aggregate, \$220,251.46 in receipts and \$217,045.77 in disbursements. In total from 2008 to 2011, the Committee filed 12 incomplete disclosure reports with the Commission. In response, the Committee acknowledges the reporting errors but requests that the Commission decline to open an enforcement matter and refer the matter to Alternative Dispute Resolution ("ADR").

Based on the available information, we recommend that the Commission open a MUR in connection with RR 12L-14 and find reason to believe that the Committee violated 2 U.S.C.

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§ 434(b) by failing to disclose accurately receipts and disbursements in reports to the Commission. Additionally, we recommend that the Commission enter into pre-probable cause conciliation with the Committee

II. FACTUAL AND LEGAL ANALYSIS

A. Factual Background

As detailed in the chart below, the Committee amended 12 reports — originally filed with the Commission from 2008 through 2011 — to disclose additional receipts totaling \$220,251.46 and additional disbursements totaling \$217,045.77.

BACHMANN FOR CONGRESS AMENDED REPORTS

Report	Date of Amendment	Increased Receipts	Increased Disbursements	Total
2008 30 Day Post-General	5/17/2011	n/a	\$600.00	\$600.00
2008 Year End	5/17/2011	n/a	\$272.10	\$272.10
2009 April Quarterly	5/17/2011	n/a	\$2,424.99	\$2,424.99
2009 July Quarterly	9/17/2010 & 5/18/2011	\$81,193.62	\$124.35	\$81,317.97
2009 October Quarterly	5/18/2011	\$7,000.00	n/a	\$7,000.00
2010 April Quarterly	9/17/2010 & 5/18/2011	\$119,334.23	\$6,274.09	\$125,608.32
2010 July Quarterly	9/17/2010 & 5/18/2011	\$6,364.52	\$4,800.00	\$11,164.52
2010 12 Day Pre-Primary	9/20/2010 & 5/18/2011	\$3,285.00	n/a	\$3,285.00
2010 October Quarterly	5/18/2011	\$2,370.36	\$57,338.16	\$58,708.52
2010 12 Day Pre-General	5/18/2011	n/a	\$137,962.50	\$137,962.50
2010 30 Day Post-General	5/18/2011	n/a	\$7,249.58	\$7,249.58
2011 April Quarterly	5/20/2011	\$703.73	n/a	\$703.73
	TOTAL	\$220,251.46	\$217,045.77	\$437,297.23

In response to these amendments, RAD sent the Committee a Request for Additional Information ("RFAI") that inquired about the increased activity disclosed on these reports. Letter from Ben Holly, Senior Campaign Finance Analyst, Federal Election Commission, to

1 Thomas C. Datwyler, Treasurer, Bachmann for Congress (Nov. 10, 2011) (on file at
2 www.fec.gov).¹ The RFAI noted that the amount of receipts and disbursements disclosed in the
3 amended reports reflected a substantial increase, decrease, or both, when compared to the
4 amounts disclosed in the original reports. *Id.* It further requested that the Committee either
5 amend the reports or provide an explanation to clarify why the correct activity was not provided
6 in the original reports. *Id.* The Committee responded to the RFAI by filing a Miscellaneous
7 Text Submission (Form 99) explaining that the amendments were made as "a result of a self-
8 initiated review of all transactions." Bachmann for Congress, Form 99 (filed Dec. 14, 2011).

9 The RAD Analyst called the Committee on January 13, 2012 and informed its then-
10 treasurer, Thomas Datwyler, that the Committee may be referred for further action by the
11 Commission and that the treasurer could provide any additional information regarding the
12 increased activity. After that conversation, the Committee filed an additional Form 99, again
13 explaining that the amendments were made as a result of a self-initiated review of all
14 transactions. Bachmann for Congress, Form 99 (filed Jan. 16, 2012).

15 RAD referred the Committee to OGC for failing to disclose receipts totaling \$220,251.46
16 and disbursements totaling \$217,045.77. *See* Memorandum from Patricia Carmona, Chief
17 Compliance Officer, Federal Election Commission, to Anthony Herman, General Counsel,
18 Federal Election Commission (Mar. 23, 2012) (hereinafter "Referral"). The Committee was
19 referred to OGC pursuant to RAD's 2011-2012 Review and Referral Procedures,
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¹ RAD previously sent RFAs regarding four of these reports. This report, however, only recounts the events related to the November 10, RFAI because it encompasses all of the Committee's increased or decreased activity disclosed on each of its 12 final amended reports.

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3 Upon receipt of the Referral, OGC notified the Committee about this matter on
4 February 3, 2012. *See Agency Procedure for Notice to Respondents in Non-Complaint*
5 *Generated Matters*, 74 Fed. Reg. 38617 (Aug. 4, 2009).

6 In its response, the Committee does not dispute the underlying violations; rather, the
7 Committee requests that the allegations be referred to ADR. Resp. at 1. According to the
8 Committee, the alleged discrepancies from the 2008 and 2012 election cycles “are comparatively
9 *de minimis*, do not warrant enforcement action, and are appropriately resolved in ADR.” *Id.*
10 Likewise, the Committee asserts that the misreported activity from the 2010 election cycle
11 represents a very small proportion of that cycle’s receipts (1.6% of funds raised in 2010
12 campaign) and disbursements (1.9% of funds spent in 2010 campaign). *Id.* As a further basis for
13 ADR referral, the Committee notes that this small proportion of misstated activity coincided with
14 a dramatic increase in the Committee’s receipts, “including a striking increase in the number of
15 low-dollar donors.” *Id.* Finally, the Committee claims that referral to ADR is appropriate
16 because the Committee “proactively initiated an internal review to examine the dramatic increase
17 in receipts and disbursements during the 2010 election cycle and in an effort to ensure
18 compliance with the reporting requirements under the Act and Commission regulations.” *Id.*

B. Legal Analysis

The Federal Election Campaign Act of 1971, as amended, (the "Act"), requires committee treasurers to file reports of receipts and disbursements in accordance with the provisions of 2 U.S.C. § 434. See 2 U.S.C. § 434(a)(1); 11 C.F.R. § 104.1(a). These reports must include, *inter alia*, the total amount of receipts and disbursements. See 2 U.S.C. § 434(b); 11 C.F.R. § 104.3. The Act also requires committees to disclose itemized breakdowns of receipts and disbursements and the name and address of each person who has made any contribution or received any disbursement in an aggregate amount or value in excess of \$200 within the calendar year, together with the date and amount of any such contribution or disbursement. See 2 U.S.C. § 434(b)(2)-(6); 11 C.F.R. § 104.3(a)(3)-(4), (b)(2)-(4).

Here, the Committee did not comply with the Act's reporting requirements when it failed to disclose \$220,251.46 in receipts and \$217,045.77.49 in disbursements on its 12 original reports listed above. We therefore recommend the Commission find reason to believe that the Committee violated 2 U.S.C. § 434(b).

RR 12L-14 (Bachmann for Congress)
First General Counsel's Report

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RR 12L-14 (Bachmann for Congress)
First General Counsel's Report

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IV. RECOMMENDATIONS

1. Open a MUR in RR 12L-14.
2. Find reason to believe that Bachmann for Congress and Daniel Puhl in his official capacity as treasurer violated 2 U.S.C. § 434(b).
3. Approve the attached Factual and Legal Analysis.
4. Enter into conciliation with Bachmann for Congress and Daniel Puhl in his official capacity as treasurer prior to a finding of probable cause to believe.
- 5.
6. Approve the appropriate letters.

Anthony Herman
General Counsel

Daniel A. Petalas
Associate General Counsel

8-3-12
Date

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